



OFFICE OF THE TOWN ATTORNEY
PARADISE VALLEY, ARIZONA

September 30, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: WC Docket No. 11-59

To the Commission,

I am the Town Attorney for the Town of Paradise Valley ("Town"). In this docket PCIA has made the allegation in its comments in this proceeding that the Town: 1) requires full discretionary zoning hearings for co-locations (see Exhibit B, Section II to the PCIA Comments); has rights of way issues (Exhibit B, Section III to the PCIA Comments); and has hired "problematic consultants" (Exhibit B, Section V to the PCIA Comments).

As the chief legal officer for the Town, I want to correct the record and advise you that these allegations are not correct.

I. Co-locations are Not Subject to Full Discretionary Zoning Hearings

Regarding the first contention by PCIA, that the Town requires full discretionary zoning hearings for co-locations on cell towers within the Town, this is patently incorrect.

First, the process for erecting an initial cell tower, by a conditional use permit approval, is not a full discretionary zoning hearing—and co-locations are subject to the same standards. Paradise Valley's Zoning Ordinance clearly distinguishes conditional use permits (an administrative and non-discretionary permitting process) from special use permits (the primary zoning method for non-residential uses within the Town, which may involve a full discretionary zoning hearing depending on the level of review—new uses or new special use permits would have a full discretionary review). The Town's Zoning Ordinance, at section 1103 and 1103.1, clearly provides that a conditional use permit is administrative and shall be granted if appropriate criteria are met:

"Section 1103. Conditional Uses.

A conditional use is a land use that is listed in this article as a permitted use subject to obtaining a conditional use permit. A conditional use may be appropriate in some locations and may not be appropriate in other locations due to the particular physical or operational characteristics of the conditional use. The purpose of the conditional use permit process is to determine as an administrative

act by the Town, and on a case by case basis, whether through compliance with prescribed development standards or through the imposition of development conditions the requested conditional use can be made compatible with surrounding existing or approved or anticipated land uses.

Section 1103.1. Nature of Conditional Use Permit.

The grant of a conditional use permit is an administrative act and not subject to reviews by referendum. A permit for a conditional use may be granted only if findings are made by the Planning Commission or, if the Planning Commission decision has been appealed, the Town Council that the standards for approval have been met by the applicant. A conditional use permit may be approved subject to compliance with additional conditions that are necessary or appropriate to reduce the impacts of the proposed use on neighboring properties and the community as a whole.” (Emphasis added)

Second, the “prescribed development standards” for cell towers (called “personal wireless service facilities” or “PWSFs” under Article XII of the Town Zoning Ordinance) upon which all cell tower applications are reviewed, pursuant to Section 1203 of the Zoning Ordinance, clearly states that such applications will be reviewed using conditional (thus non-discretionary) use permit procedures:

“Section 1203. General Requirements

- A. The determination of where a PWSF shall be located is subject to the following. Certain locations have been identified by the Town as potential PWSF sites and are subject to all of the provisions of this Article and the Town Code. Said locations are set forth in Town of Paradise Valley Resolution No. 932 as it may be amended from time to time. Any subject property that meets the requirements of this Article may be eligible for consideration for a PWSF, or modification thereof, pursuant to a conditional use permit, in accordance with the standards in this article.
- B. A PWSF or modification thereof is permitted only with a conditional use permit, granted pursuant to Article 11, Sections 1103 et seq of the Zoning Ordinance and this Article. No PWSF may be developed, located, constructed or operated without a conditional use permit. A conditional use permit is required for any modification to a PWSF.” (Emphasis added)

Additionally, to aid the wireless industry in quickly finding non-residential locations within the relatively small (approximately 16 square miles) confines of the Town, the PWSF provisions of the Zoning Ordinance have identified, pursuant to Resolution No. 932 (see underlined portion of Section 1203(A) above, and attached Exhibit A, a copy of Resolution No. 932) over 30 locations within the Town that have already been identified as acceptable cell tower sites. It should be further noted that the Zoning Ordinance does not exempt residentially zoned

properties from being considered acceptable sites for PWSFs, thus PWSFs are not excluded from any zoning district within the Town.

Third, the standards to be applied to co-locations (Article XII, Section 1208, below) are the same as those for an initial PWSF or cell tower application, thus they are subject to an administrative review:

Section 1208. Co-Location and Limitations

- A. Permittee shall cooperate with other personal wireless service carriers in co-locating antennas and mounts provided the proposed co-locators have received a conditional use permit for the use at such site from the Town. A Permittee shall exercise good faith in co-locating other personal wireless service carriers and sharing the permitted site, provided such shared use does not give rise to a substantial technical level impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities). Applicants shall demonstrate a good faith effort to co-locating with other personal wireless service carriers, including but not limited to:
 - 1. Contact with all other personal wireless service carriers operating in the Town;
 - 2. Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location;
 - 3. In the event a dispute arises as to whether a Permittee has exercised good faith in accommodating other users, the Town may require a third party technical study at the expense of either or both the applicant and Permittee.
- B. All applicants shall demonstrate reasonable efforts in developing a co-location alternative for their proposal.
- C. Failure to comply with the co-location requirements of this Section may result in the denial of a permit request or revocation of an existing permit.

As is evident, the Town strongly encourages co-locations and maintains the same administrative process for the review of co-locations as it does for the initial PWSF (cell tower) review. It should be noted that the Town has applied this same standard to itself (the Town has applied for conditional use permits) and has successfully approved two co-locations of cell tower sites on two of its municipal buildings—Alltel and Verizon have co-located at the Town's Fire Station #91 site and T-Mobile and AT&T have co-located atop the Town's municipal public works building. All of these sites, both the initial cell tower sites and the co-located towers, were processed using the conditional use permit process. Any assertion that the Town requires full

discretionary zoning hearings for co-locations on cell towers within the Town is false and inaccurate.

II. The Town Does not have Significant “Right of Way Issues”

PCIA cites to a provision of the Town’s Zoning Ordinance relating to spacing standards for PWSFs (Article XII, Section 1204(3)’s requirement of a spacing of 200 feet from any single-family residence) as evidence that the Town Zoning Ordinance creates significant rights of way issues. This section of the Zoning Ordinance applies to all PWSF sites within the Town--other than those that are now located within the Town’s rights of way.

Although the 200 foot spacing requirement may appear to be problematic, it has not proven such—and it has merit in light of the unique setting of the Town of Paradise Valley. First, it is helpful to understand that the Town of Paradise Valley is largely a dark sky residential community composed primarily of residential development on lots of one acre or larger, with very few overhead utilities or lights of any kind and limited heights on homes (most are limited to 24 feet) and other structures within the Town. The Town has also spent over \$18 million dollars over the last 15 years for the conversion of existing overhead utility lines to underground lines so that the beautiful mountain and open sky views within the Town could be advantageously maximized for both residential land owners within the Town and for guests at any of the eleven resorts within the Town. Thus, the 200 foot spacing was structured so that cell towers would be strategically located towards the interior of any of the over 30 locations identified in Resolution No. 932 and not impede the mountain and open sky views within the Town.

However, it should be noted that the spacing requirement between cell towers and residential dwellings has not created an impediment to the erection of over 42 DAS cell tower sites within the Town’s rights of way through its recent approval of a special use permit for the addition of these 42 cell tower sites a little over a year ago. The Town was able to approve these 42 sites, for the benefit of Newpath/Crown Castle Networks (now doing business as Crown Castle USA), using its authority under the Town Zoning Ordinance provisions that allow for new aerial utilities to be approved by special use permit (which are legislative and enacted by ordinance, thus able to have specific standards for approval that are not tied to the Zoning Ordinance provisions associated with PWSFs or other cell tower sites). It should also be noted that the license agreement negotiated between Newpath/Crown Castle and the Town provides for reduced license payments from Newpath/Crown Castle for the addition of the second and third carriers (AT&T is the initial carrier, or anchor, for the Newpath/Crown Castle DAS system in the Town), thus evidencing the Town’s commitment to encouraging co-location on these 42 DAS towers as well as its encouragement of better broadband coverage within the Town.

Although the initial discussions with Newpath/Crown Castle led to some skepticism on the part of both parties as to the efficacy of the Newpath/Crown Castle DAS system and posturing by both parties, eventually the Town and Newpath/Crown Castle worked cooperatively in the siting of the 42 DAS antennae locations within the Town’s rights of way so that both the broadband coverage needs of AT&T and the aesthetic concerns of the Town were balanced. As a point in fact, the Town actually hired a consultant, Christine Malone of Compcomm, to help

assess the efficacy of the Newpath/Crown Castle DAS system for the provision of better broadband coverage within the Town and to ensure that any movement of proposed DAS antennae sites to more aesthetic locations would not interfere with the functionality of the DAS system as a whole.

Given the level of cooperation of the Town with DAS and other providers it is incomprehensible to state that the Town has “rights of way issues,” particularly when the Town Zoning Ordinance section cited by PCIA did not create any impediment to the recent approval of 42 new antennae sites within the Town’s rights of way.

III. The Town has not Retained “Problematic Consultants”

Section V of Exhibit B to the PCIA Comments lists the Town as jurisdiction that has retained a “problematic consultant,” but without any citation as to who that consultant was or how such a consultant was problematic. To my knowledge (and I have been the Town’s Attorney for over 13 years) the only consultant the Town has ever retained was Christine Malone of Compcomm, as noted above. And as noted above, Ms. Malone did not create any of the problems noted by PCIA in Section V of its comments. The Town and/or its consultant, did not charge any applicant any additional charge, create any additional application fee, impose any new or superfluous application requirement, require a discretionary review for co-locations, or delay the application and review process.

Rather, Ms. Malone performed certain specific functions that actually added value to the review process for the 42 DAS antennae sites noted above, including driving with staff and consultants for both the Town and Newpath/Crown Castle to review each of the individual DAS antennae sites to find locations that would offer the best broadband coverage for Newpath/Crown Castle while moving the initial site placement for many of these 42 DAS antennae sites (from street corner locations to side yards) so as to maximize the potential for aesthetically blending these sites into the existing hardscape and landscape within the Town. The Town did not retain Ms. Malone to create roadblocks to the location of these 42 antennae sites, but instead to verify that the DAS system as laid out would actually work—and to then assist staff and Newpath/Crown Castle in making sure that any sites that were relocated for aesthetic reasons were still within the proximities required to provide the broadband coverage that Newpath/Crown Castle was seeking to provide within the Town. This initial effort to maximize both broadband coverage and seek aesthetically-pleasing locations proved very successful in helping the approval process for all 42 antennae sites move quickly through the Town’s special use permit approval process—perhaps one of the fastest new special use permit approvals in quite some time.

The other function performed by Ms. Malone was to evaluate the RF emission reports prepared by Newpath/Crown Castle for the 42 antennae sites and to affirm that the RF emission reports were accurate, prepared pursuant to the standards issued by the FCC, and that all 42 antennae were in compliance with the FCC’s emission standards. The Town has often operated on a “trust but verify” model in its review of zoning applications, particularly those that involve expert analysis. The Town will often retain (at its own cost) a civil engineer to review the parking and circulation studies prepared by an applicant for a rezoning that involves a significant

amount of new development. This assists Town residents in assessing the accuracy and trustworthiness of the applicant's expert's assertions. Ms. Malone performed this same function and helped provide a separate review of the RF emissions studies prepared by Newpath/Crown Castle so that Town residents who may have had concerns about RF radiation (which often seems to be a chief concern with new cell tower sites) would be able to know that the studies submitted by the carrier's expert were accurate and met all FCC safety standards. The assistance provided by Ms. Malone in this regard actually helped overcome any Town resident concerns regarding RF emissions and assisted in speeding up the approval process for the 42 antennae sites. And all of the costs of retaining Ms. Malone's consulting services were paid for by the Town.

Without more specific information, the Town is baffled as to why PCIA would have identified it as having hired an obstructionist or problematic consultant. Surely this could not have been the lone instance of hiring Christine Malone of Compcomm unless just the mere hiring of any consultant for any purpose is viewed by PCIA as being "problematic."

As all of the Town Zoning Ordinance sections noted above and the examples of Town cooperation with the wireless industry evidence, the Town of Paradise Valley has worked with the industry to obtain better broadband coverage within its boundaries while still making sure that the aesthetics of the Town are not severely denigrated. It should be noted that such success could not have been achieved without a collaborative effort, and thanks should also be extended to Newpath/Crown Castle for its flexibility and desire to work with the Town to find workable solutions that fit both the wireless industry's needs, the Town's desire for better broadband coverage, and the use of aesthetic applications that permitted the expedient approval and construction of 42 new antennae sites within the Town. I anticipate that the Crown Castle website should soon have available a promotional video that includes an interview with Vice Mayor Hamway that evidences the level of cooperation between the Town and the wireless industry would encourage the Commissioners to check the Crown Castle website in the future should they have any questions about how a collaborative effort between the wireless industry and a municipality can provide for workable solutions that do not run counter to a community's desire to maintain its local zoning controls over new wireless sites. Until the promotional video is posted, I would refer the Commissioners to the News Release from Crown Castle dated March 30, 2011 regarding the successful launch of the 42 new DAS antennae nodes.

Additionally, the Town supports the comments of the National League of Cities, National Association of Counties, et al in this proceeding, and encourages the provision of wireless services.

Very truly yours,



Andrew M. Miller
Town Attorney

cc: Chuck Thompson, International Municipal Lawyers Association

EXHIBIT A



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

98-0213661 03/19/98 04:47

TONY 3 OF 3

When recorded, return to:

Paradise Valley Town Attorney
6401 East Lincoln Drive
Paradise Valley, Arizona 8525

RESOLUTION NUMBER 932

A RESOLUTION OF THE TOWN OF PARADISE VALLEY RELATING TO PERSONAL WIRELESS SERVICE FACILITIES, IDENTIFYING POSSIBLE SITE LOCATIONS

BE IT RESOLVED:

Section 1: THAT THE TOWN COUNCIL OF THE TOWN OF PARADISE

VALLEY, HAVING ADOPTED REGULATIONS CONCERNING PERSONAL

WIRELESS SERVICE FACILITIES, ENACTS THIS RESOLUTION NUMBER

932 TO IDENTIFY POTENTIAL LOCATIONS FOR SUCH FACILITIES. THIS

RESOLUTION IS INTENDED TO IDENTIFY THOSE LOCATIONS SET OUT

BELOW, BUT IS NOT INTENDED TO BE AN EXCLUSIVE LISTING :

THE FOLLOWING LOCATIONS ARE HEREBY IDENTIFIED AS POTENTIAL
PWSF SITES SUBJECT TO ALL OF THE PROVISIONS OF THE TOWN CODE:

PHOENIX COUNTRY DAY SCHOOL	3901 E. STANFORD DRIVE
CAMELBACK BIBLE CHURCH	3900 E. STANFORD DRIVE
HERMOSA INN	5532 N. PALO CRISTI ROAD
CAMELBACK UNITED PRESBYTERIAN CHURCH	3535 E. LINCOLN DRIVE
CHRIST CHURCH OF ASCENSION	4015 E. LINCOLN DRIVE
UNITARIAN UNIVERSALIST CHURCH	4027 E. LINCOLN DRIVE
LINCOLN BIBLE CHURCH	4222 E. LINCOLN DRIVE
SCOTTSDALE PLAZA RESORT	7200 N SCOTTSDALE ROAD
P.V. UNITED METHODIST CHURCH	4455 E. LINCOLN DRIVE
RED LION'S LA POSADA RESORT	4949 E. LINCOLN DRIVE
P.V. COUNTRY CLUB	7101 N. TATUM BLVD.
CAMELBACK INN	5402 E. LINCOLN DRIVE

EL CHORRO LODGE	5550 E. LINCOLN DRIVE
MOUNTAIN SHADOWS RESORT	5641 E. LINCOLN DRIVE
GARDINER'S TENNIS RANCH	5700 E. MCDONALD DRIVE
CALVARY CHURCH OF THE VALLEY	6107 N. INVERGORDON
P.V. TOWN HALL	6401 E. LINCOLN DRIVE
JUDSON SCHOOL	6704 N. MOCKINGBIRD LANE
ST. BARNABAS CHURCH	6715 N. MOCKINGBIRD LANE
ASCENSION LUTHERAN CHURCH	7100 N. MOCKINGBIRD
COTTONWOODS RESORT	6160 N. SCOTTSDALE ROAD
SMOKETREE RESORT	7101 E. LINCOLN DRIVE
KIVA SCHOOL	6911 E. MCDONALD DRIVE
P.V. SURGICAL CENTER	7101 E. JACKRABBIT ROAD
FIRST SOUTHERN BAPTIST CHURCH	5230 N. SCOTTSDALE ROAD
DOUBLETREE P.V. RESORT	5401 N. SCOTTSDALE ROAD
CAMELBACK GOLF CLUB	7847 N. MOCKINGBIRD LANE
CHEROKEE SCHOOL	8801 N. 56TH STREET
RURAL METRO FIRE STATION	8444 N. TATUM BLVD.
MOUNTAIN VIEW MEDICAL PLAZA	10575 N. TATUM BLVD.

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3 PASSED AND ADOPTED by the Mayor and Town Council of the Town of Paradise
4 Valley this 26th day of February, 1998.

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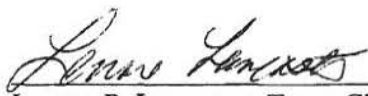
ATTEST:

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Lenore P. Lancaster, Town Clerk

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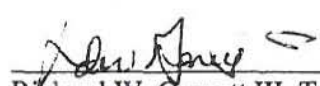
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APPROVED AS TO FORM:

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Richard W. Garnett III, Town Attorney

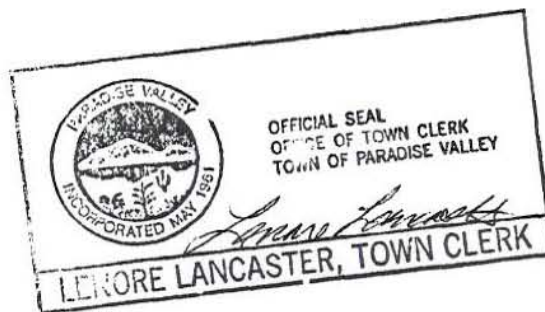
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CERTIFICATION

I, Lenore P. Lancaster, Town Clerk, certify that the foregoing is a true copy of Resolution Number 932 duly passed and adopted by affirmative vote of the Town Council of Paradise Valley at a meeting held on the 26th day of February, 1998 . Passage of this Resolution appears in the minutes of the meeting. The Resolution has not been rescinded or modified and is now in effect. I further certify that the municipal corporation is duly organized and existing, and has the power to take the action called for by the Resolution


Lenore P. Lancaster, Town Clerk



FOR IMMEDIATE RELEASE

Contacts: Jay Brown, CFO
Fiona McKone, VP - Finance
Crown Castle International Corp.
713-570-3050

**CROWN CASTLE ANNOUNCES DISTRIBUTED ANTENNA SYSTEM
IN PARADISE VALLEY, ARIZONA**

Network to Enhance Wireless Coverage in Residential Community

March 30, 2011 – HOUSTON, TEXAS – Crown Castle International Corp. (NYSE:CCI) today announced that one of its subsidiaries has completed construction of a distributed antenna system (DAS) to facilitate wireless communications services in Paradise Valley, Arizona. The community near Phoenix approved a DAS wireless solution in order to provide enhanced wireless coverage, preserve the town's aesthetics, and accommodate multiple wireless carriers. The Paradise Valley DAS network provides wireless coverage for residents and first responders throughout the 16 square mile community. AT&T Mobility is the first wireless provider to utilize the DAS network, and the network has the capacity to support up to four additional carriers.

Working with town leaders and citizens, Crown Castle designed and constructed a forty-two node outdoor DAS system for the town. The system utilizes three streetlights, two traffic signals, and thirty-seven faux cacti to conceal wireless antennae and equipment.

"Crown Castle worked closely with the town council and residents to develop a wireless solution that would satisfy coverage demands and preserve the aesthetics of Paradise Valley," stated Mike Kavanagh, President – DAS for Crown Castle. "Crown Castle invested a lot of time in public outreach in order to educate residents about DAS and to collect their input on what the system's components should look like and where they should be located. As a result of the public outreach campaign, the town leaders approved the DAS network, allowing construction to begin without delay."

"Our town government is dedicated to preserving the residential character of the community. The town's residents expect ubiquitous wireless service, but not at the expense of changing the peaceful, quiet surroundings of the town." Said Scott LeMarr, Mayor of Paradise Valley. "With Crown Castle we found a company that recognized the special character of our town and that developed a design solution that preserved the town's aesthetics while providing great wireless coverage."

The town of Paradise Valley, Crown Castle and AT&T Mobility will celebrate the new DAS network at a Ribbon Cutting Ceremony on Wednesday, March 30th at 10:00 AM (PDT) at the Police Department Auditorium on the Town Hall Campus. Paradise Valley's mayor and council members, as well as representatives of Crown Castle and AT&T Mobility, will "flip the switch" to activate the DAS network.

About Crown Castle

Crown Castle owns, operates, and leases towers and other infrastructure for wireless communications. Crown Castle offers significant wireless communications coverage to 92 of the top 100 US markets and to substantially all of the Australian population. Crown Castle owns, operates, and manages over 22,000 and approximately 1,600 wireless communication sites in the US and Australia, respectively. For more information on Crown Castle, please visit www.crowncastle.com.